

To: Governor's Task Force on Energy Efficiency and Renewables

From: Administrative Model and Funding Work Group

Date: July 9, 2004

Re: Work Group Recommendations for Energy Efficiency Framework

## **I. Introduction**

The Governor's charge to this Task Force is to restore Wisconsin to a pre-eminent position in achieving valuable public benefits from increased energy efficiency efforts (as well as from increased renewable energy initiatives). Energy efficiency can help mitigate the need for new supply resources and infrastructure; improve the environment and increase our quality of life through improving the competitiveness of Wisconsin business and the vitality of Wisconsin's economy while reducing the energy burdens of Wisconsin residents, especially our lower income families.

Act 9, which together with s. 1.12(4), currently sets forth the existing framework for energy efficiency efforts in Wisconsin and was adopted in the late 1990s. Act 9 was developed at a time when there was limited experience in other jurisdictions and in Wisconsin about the variety of options, and the potentially best option, for an on-going energy efficiency (including Public Benefits) framework for Wisconsin.

This Work Group has sought to identify which, if any, changes to Act 9 are appropriate to improve on-going and future energy efficiency/Public Benefits efforts. Our analysis has considered the public comments from the recent public hearings in which a variety of Wisconsin citizens provided valuable input for our review (e.g. the establishment of clear targets and objectives to insure value and accountability; the need for increased overall administrative efficiency; the need to better establish Public Benefits funding in relation to achievable energy efficiency potential in the state and the importance of consistently maintaining adequate Public Benefits funding levels so as to properly support the efforts of various market providers to both increase energy efficiency levels and promote economic development within Wisconsin). Our recommendations, while not always adopting the specific approach proposed in a public comment, set forth improvements to Act 9 that would achieve the purpose of an improved, more effective, adequate, accountable and equitable energy-efficiency/Public Benefits effort that underlies the public comments received.

Our review has indicated that Act 9 incorporated important policies and objectives that have proven to be significant contributors to successful energy efficiency efforts (especially the move to statewide programs in certain markets and an emphasis on developing and operating programs with market providers such as retailers, contractors and distributors/manufacturers to make more lasting market effects that promote increased energy efficiency over time). However, while the Work Group would retain the best of the "lessons learned" from the implementation of Act 9 going forward, ***we conclude that there should be meaningful modifications made to Act 9 to increase the transparency, accountability, efficiency and effectiveness of Public Benefits and other energy efficiency initiatives as well as to better integrate Public Benefits efforts with***

*state-wide energy resource efforts including the Public Service Commission's implementation of its obligations under the State's Energy Priorities Statute, s. 1.12(4).*

## **II. Major Continued Elements of Existing Act 9**

The Work Group in this memo sets forth its primary changes to improve the existing Public Benefits framework. We have focused on appropriate changes to Act 9. Therefore, unless a specific recommended change would require the modification of another provision of the existing Act 9, our recommendations do not expressly affect other sections of the current law. However, to insure that these proposed recommendations are understood in the appropriate context, this section describes the primary elements of the existing Public Benefits framework that are not affected by our recommendations. These primary elements include:

1. The retention of the statutory priority areas set forth in s. 16.957(2)(b)1.a. that make clear that the Public Benefits initiative concerns a broader range of public interests and objectives than just the capture of resource benefits to defer or mitigate the need for additional energy supply. The targets, goals and objectives for Public Benefits efforts should continue to encompass this broader range of "public benefits".
2. The importance of reinvigorating the Advisory Council to the Department of Administration (DOA) to provide both input for and external oversight of Public Benefits efforts. This group or its members would also be valuable contributors to Public Service Commission (PSCW) efforts.
3. The continued and important role of DOA as the "overall administrator" to facilitate the development and operation of processes and programs that will best maximize the balance of broader public benefits goals and objectives set forth by the PSCW. These efforts include retaining effective program administrators, providing efficient administrative oversight of the development, implementation and delivery of Public Benefits efforts and making important allocations such as prospective budgets for various program efforts in various customer/market segments.
4. The continuation of DOA's role as the "overall administrator" for low-income Public Benefits efforts as well as continued environmental R&D and customer-side renewable energy initiatives.
5. Utilities should continue to provide energy efficiency and renewable energy information to customers and to promote Public Benefits efforts.
6. The current ability of municipal utilities and cooperatives to operate and administer their own Public Benefits programs.

While our recommendations increase the role for the PSCW in Public Benefits, they by no means diminish the importance of the need for the "overall administrator" to effectively and efficiently

oversee the development of the specific means to best accomplish the balance of public benefits objectives desired.

**III. Four Key Policy Goals Must Be Achieved: Adequate and Secure Funding, Substantial Cost-Effective Benefits, Transparency and Accountability for Results, and Integration with the Resource-Selection Decisions of the PSCW.**

These are the four key benchmarks for Wisconsin's energy-efficiency efforts: (1) the Public Benefits effort should be readily transparent and accountable to the public so that the value of the initiative can be easily assessed and the assurance gained that Public Benefits funds are being spent in a manner consistent with maximizing the purpose of the initiative; (2) the PSCW should play a key role in setting the appropriate funding level for on-going energy efficiency efforts to meet the public benefits objectives set forth in Act 9 including as part of its overall energy resource decisions, especially under s. 1.12(4); (3) the DOA should continue to be the "overall administrator" of these Public Benefits programs and the PSCW and DOA respective roles should be coordinated in a detailed cooperative agreement; and (4) consistent funding is essential to allow longer term program planning and implementation efforts that facilitate working closely with market providers.

**IV. The Role of the PSCW Should Be to Determine Overall Resource Targets for Energy Efficiency, Set Funding Levels Sufficient to Reach These Targets, and Oversee Utility-Administered Programs.**

The PSCW has jurisdiction over the plans and costs proposed by utilities to meet the electric and natural gas needs of customers through a safe, reliable, reasonably priced and environmentally sensitive energy resource system. This extensive authority over resource decision making for electric and natural gas applications includes the Energy Priorities Statute which requires the Commission, where cost-effective and technically feasible, to select energy efficiency as the first priority among resources, s.1.12(4), s.196.025(1).

Recently, the Commission is appropriately considering re-integrating its regulatory resource responsibilities into a new approach to the biennial Strategic Energy Assessment for the state. There is a common understanding among those involved in energy resource efforts that individual rate cases and construction proceedings are not the best vehicles for developing and implementing broad energy policy because they lack a comprehensive, longer-term and statewide perspective and do not adequately address the need for consistent efforts over time that would most effectively mitigate resource needs.

Energy efficiency is a complement to energy supply that can help the State meet important public objectives. Along with saving energy for customers and utilities, energy efficiency programs can provide societal benefits and assist the state's economic development efforts. If we do not select energy efficiency when it is a viable alternative, we will incur higher costs and greater societal impacts than are necessary or appropriate. *We must insure that adequate funding levels and*

*programs for energy efficiency are consistently available as part of an optimal, “least-cost” mix of initiatives to attain valuable public benefits including energy resource benefits.*

The PSCW can help achieve this result in the following ways:

1. It should every 4 or 5 years ( i.e. a time most consistent with the SEA process) hold public hearings ( that maximize public input and allow decisions to be translated into legally binding orders) that incorporate the state’s energy needs from its SEA efforts, evaluate the potential for energy efficiency, and establish overall savings and other qualitative and quantitative state-wide targets for on-going utility funded energy efficiency and Public Benefits efforts. The Commission should establish by order a specific amount to be included in utility revenue requirements that is adequate to achieve the Public Benefits targets and objectives over the four or five-year period. ***To assist in making these decisions, the PSCW should insure that up to date energy efficiency potential studies and information are available for its consideration in all major market sectors: residential, commercial, agriculture and industrial.*** These periodically updated potential studies would aid in the determination of priority goals, targets and measures of success. Relating the level of Public Benefits funding to resource need, *achievable* energy efficiency potential and other relevant factors provide a more effective means to satisfy the requirements of s. 1.12(4) as well as provide a clear nexus to the public between Public Benefits funding and the expected public benefits from such efforts. The PSCW would also decide what is “cost-effective” (e.g. the societal cost test currently used by DOA) and consider other relevant factors such as potential rate impacts or “lost opportunities” in setting adequate budget levels.

In addition, the PSCW should establish in its order the general framework for on-going Public Benefits efforts in terms of priority areas (including statutory priority areas), establish equitable funding amounts to recover the cost of Public Benefits efforts, prescribe the statewide efforts appropriate in the larger commercial (including agricultural and institutional) sector and in the industrial sector that should be administered by the Business Programs administrator, and clarify the relative general balance of various program strategies such as market transformation and resource acquisition approaches. However, we recommend that the PSCW not attempt to develop specific budget allocations, program designs or implementation strategies but rather leave such efforts to the program administrators retained subject to coordination with DOA as the “overall administrator”.

Finally, as part of this proceeding, the PSCW would consider utility requests to retain some portion of their funds to administer programs in their service territory for larger commercial (including institutional and agricultural) customers and/or for industrial customers (See #2 on p. 8 below). A utility must make such a

request as part of this proceeding or else must wait at least one year after such proceeding to provide a one-year notice of intent to seek the ability to retain funds for a larger customer program. This is necessary to provide some certainty to the level and scope of PB funding and effort over the period. The Commission would also consider whether and how to incorporate outstanding Commission Orders, if any, for individual utility programs.

We have assumed that changes in cost levels as a result of these proceedings, or other proceedings in-between, would be addressed through the use of the existing conservation escrow accounts. Escrowed dollars can be sought to be recovered in rates in a utility's next rate proceeding.

2. The budget costs identified by the PSCW should be embedded for recovery in the utility revenue requirement (as are the costs for other resources like power plants). ***Because this is intended to be a comprehensive statewide effort, these overall budget costs should be equitably divided among the utility customers funding Public Benefits efforts so that similarly situated utilities and their customers are contributing the same amount toward the Public Benefits effort. (e.g. to insure funding equity, residential customers of Utility A should contribute the same average per residential amount as the residential customers of Utility B).*** The Commission should determine the appropriate level of funding to be assessed to different customer classes but all utility customers within a given classification should pay a uniform per kwh or fixed amount towards Public Benefit efforts. We believe these are important improvements to the funding method set forth in the current Act 9.

We believe that once Public Benefits funding is made secure due to appropriate statutory changes that the current caps and limitations on the recovery of these costs in Act 9 should be re-examined and modified appropriately to accommodate this move to insure funding equity as well as to mitigate some of the administrative costs and problems that general caps create.

3. ***To insure transparency and accountability, benefit and cost information should be provided to utility customers periodically (e.g. every 12 months) so that customers can compare the costs that they are paying in their bill to the benefits that are being produced through the expenditure of Public Benefits funds. We believe that providing benefit and cost information (including the monthly or annual amount paid by a customer and the net present value, NPV, of the cost-effectiveness of Public Benefits efforts) at the same time to customers better allows customers to assess the value of Public Benefits efforts. We view this requirement as an improvement to the current requirement in Act 9.*** It is essential to the effectiveness of on-going efforts that those who are funding the program have the opportunity to perceive the value of those efforts. This comparison of benefits and costs also provides a better basis for citizens to

suggest appropriate improvements to on-going and future Public benefits efforts. We also recommend that the PSCW should utilize its periodic SEA public hearings (among other public hearing opportunities) to provide a forum for customers to provide feedback on Public Benefits efforts and input into program offerings.

4. The Commission will determine which, if any, portion of this overall Public Benefits amount may be retained by the utilities for use in utility-administered programs for larger commercial customers (including agricultural and institutional) and/or for industrial customers. (The utility option to retain some of its Public Benefits funds for large commercial [including institutional and agricultural] customers and/or industrial customer programs is discussed in greater detail later in this memo). This determination will be made on a voluntary proposal by an individual utility, with the Commission determination based on established criteria. Any such retained program should have specific savings targets as well as other performance goals established by the PSCW and should be subject to the same requirement for program transparency, accountability and an independent third party measurement and evaluation (M&E) criteria as Public Benefits efforts. A utility with an approved "retained" program shall be directly accountable to the PSCW.
5. As described above, the Commission also has the duty to interpret and apply the Energy Priorities Statute, s. 1.12(4), where cost-effective and technically feasible energy efficiency is the first priority. ***We believe that it is imperative that the Public Benefits initiative be more closely integrated with the application of the Energy Priorities Statute.*** The adequacy of funding and effectiveness of energy efficiency efforts are essential to insuring that the first-priority status of cost-effective, technically feasible energy efficiency is satisfied in practice. It is thus indispensable to insure the security of the funding level deemed adequate by the Commission, and to protect these funds from diversion to other uses if the purposes of Public Benefits, including the Energy Priorities Statute, are to be met.

There are two basic requirements for improving funding security for Public Benefits. First, the adoption of increased structural protections to protect the funds such as an independent fiscal agent to hold funds exclusively for Public Benefits purposes or a strengthened trust fund is appropriate. Second, a successful, transparent and accountable Public Benefits program is needed whose value is easily perceived and supported by the public and by public officials. Absent strong support for the program, any structural reforms to protect Public Benefits can be undone. Therefore, it is crucial that adequate levels of funding actually be available to allow the Public Benefits program to demonstrate its value (including, if not especially during its formative years). There is general agreement that it is the public interest not to reduce the level of such funds below that deemed

appropriate by the PSCW in order to insure attaining valuable public benefits over time.

**The PSCW in the periodic hearings and decisions noted above should in effect be identifying the achievable energy efficiency potential required for the forthcoming 4-5 year period to satisfy Public Benefits objectives including s. 1.12(4) and establish budgets and overall targets and objectives to achieve that potential. This is an important improvement of Act 9 which severed the requirements of s. 1.12(4) from Public Benefits efforts.**

6. The DOA/Focus on Energy should continue to be the “overall administrator” of the day-to-day activities to administer the implementation of Public Benefits efforts through its cooperative agreement with the PSCW including overseeing the selection and the activities of independent program administrators as set forth in Act 9. The cooperative agreement pursuant to s. 20.901(1) would set forth in detail the specific responsibilities of the PSCW and the DOA. Joint responsibilities would include for example: 1) allocation of funds among program administrators; 2) establishing consistency between Commission-regulated programs and DOA-administered programs; and 3) approving the reports of the independent evaluator regarding measurement and evaluation of results.
7. **The Work Group recommends an appropriate change in the Energy Priorities Statute if Public Benefits funding is increased by statute or Public Service Commission ruling. The PSCW and the utilities will be deemed to have fully satisfied all requirements under the Energy Priorities Statute with respect to customer-side energy efficiency if the utilities meet the above funding requirements and the amount set by the PSCW for energy efficiency is actually spent for energy efficiency. There is not current agreement on whether the collection of the funds deemed adequate by the PSCW alone would satisfy the PSCW and utility obligations under the Energy Priorities Statute if those funds are not expended solely for Public Benefits uses.**

#### **V. The Role of the DOA Would Be to Administer and Oversee the Focus on Energy Program**

A primary reason for retaining the current “overall administrator” and “program administrator” framework in Act 9 with DOA continuing as the “overall administrator” is that much work has been done to develop and implement that system which despite difficult start-up and funding problems has provided substantial public benefits to Wisconsin residents and businesses. Some of the results to date include:

- Detailed statutes and administrative rules are in place;
- A statewide framework for programs and evaluation is in place;
- Relations are established with market providers;

- Some measure of public identification (branding) has been achieved.
1. Thus, we propose the following responsibilities for DOA:
    - a. Continue to serve as “overall administrator” of the statewide energy-efficiency and low-income programs. This role would continue the “overall administrator” responsibilities set forth in Act 9 and discussed in section II of this memo.
    - b. Act as a prime facilitator with the Programs Administrators for the following activities:
      - Activities relating to the core functions of DOA itself or other state agencies {e.g. economic development (DOA or Dept. of Commerce); agriculture (Dept. of Ag. Trade and Consumer Protection); training programs such as green building inspectors (Dept. of Workforce Development)}
      - Activities involving local units of government (cities, counties, school districts, etc.).

This coordination role would consist of working with the Program Administrators to facilitate programs related to state and local governments, and to identify and direct potential participants to energy-efficiency programs that would attain important public purposes such as improved environmental compliance or improved economic development.

2. Programs that are determined by the PSCW to be most efficiently provided on a statewide basis (such as low-income, residential, and small commercial/farm customers and potentially certain aspects of the larger customer commercial, including institutional and agricultural, sector and of the industrial market) should continue to be administered by third-party program administrators with DOA as the “overall administrator”. Statewide programs allow the capture of economies of scale, provide equity among customers, avoid conflicting programs and infrastructures that can create confusion for customers and market providers, and allow efforts with market providers such as manufacturers, distributors, retailers and contractors to increase the level of energy efficiency in the marketplace to better succeed. However, after the PSCW has identified any appropriate statewide efforts including in the larger customer sectors (commercial, including agricultural and institutional, and the industrial sector), an individual utility may propose to administer a larger customer commercial program and/or an industrial program in its service territory and to retain some of its Public Benefits funds for that effort. This would be accomplished by filing a request with the PSCW describing the program(s), proposing why such a program is appropriate and requesting a set amount of the utility’s commercial and industrial, including



agriculture, Public Benefits funding requirement be retained for such purpose. The PSCW shall establish criteria to decide such requests. However, while a utility may use its own personnel to facilitate such efforts and provide financing approved by the PSCW, the utility shall not be allowed to utilize retained Public Benefits funds to provide equipment and/or services to customers except through third-party market providers in a non-discriminatory manner.

3. **To increase administrative efficiency so that the most dollars are available for program efforts**, program administrators should be subject to performance-type contracts with both quantitative and qualitative targets and objectives. The program administrators should be provided appropriate latitude and flexibility to achieve these objectives but be held strictly accountable for achieving specific, assessable savings/benefits and performance objectives. This same approach should be adopted for a utility allowed to retain some funds to administer a “retained” larger customer program in its service territory.
4. *All Public Benefits funded program efforts should be subject to the same independent third-party M&E requirements. We recommend that the independent M&E responsibilities currently at DOA be transferred to the PSCW to complement our recommended change in the Public Benefits framework. This requirement is also an important element of our objective to provide accountability and transparency about Public Benefits efforts to the public. Having the PSCW oversee the third-party independent M&E activity will also eliminate concerns that may arise by having one State agency supervising the evaluation of some of its own actions.*
5. The duties and responsibilities of the DOA as “overall administrator” and facilitator should be more specifically defined in a PSCW/DOA interagency coordinating agreement. This agreement should provide clear and transparent criteria for DOA as “facilitator” for making grants to any customer and the requirements for independent third-party M&E of such grants. We do not recommend modifying Act 9 so as to allow DOA itself to make grants directly to customers. However, if Act 9 is modified to authorize DOA as the “overall administrator” to provide grants directly to customers, any such direct grant authority should be limited in scope and dollars and should be subject to the same requirement for program transparency, accountability and independent third-party M&E evaluation as other Public Benefits efforts.

#### **VI. The Timing for Implementation of this Recommended Package of Improvements to the Existing Act 9 or Current Public Benefits Efforts**

We view the variety of improvements that we have recommended to the Public Benefits effort to be an integrated package in most aspects. For example, the increased integration of Public Benefits with satisfying the requirements of s. 1.12(4) cannot occur without adequate and secure

funding consistent with the mandates of s. 1.12(4). Similarly, it is unlikely that there will be widespread support for increased Public Benefits funding levels unless the program is better integrated with overall energy resource decision-making. Also, the move to customer-based funding equity is appropriate to better insure that the overall value and costs for customers across the state better match. In addition, without the guidance of Commission-established state-wide energy efficiency targets based upon good energy potential studies for all market segments, reasonable and adequate funding budgets will not be attained and the valuable public benefits, including meeting the requirements of s. 1.12(4), will not be satisfactorily attained.

However, this package of changes that we propose, while certainly able to be part of any legislative proposal for the coming budget, cannot be effective immediately. For example, energy potential studies, even once their contents have been agreed upon, typically take six-nine months to complete (given the need to update the last studies from 1994, this latter timeframe is probably a more realistic estimate). Once these studies are available, under our recommendations there would need to be a public hearing held by the PSCW at which achievable potential among other factors must be developed to set on-going budgets and to help establish savings and other targets and objectives. This public proceeding, given experience with similar proceedings at the PSCW, could take between six months to a year between notice and final order. Thus, we believe that even with constant attention, it is likely to take 1-1/2 to 2 years to put in place our revised package.

## **VII. Low-Income Public Benefits Efforts**

Our Work Group has primarily focused on the non-low income program elements of Act 9. We have done so because there has been consensus that the low-income portion of the Public Benefits effort has been working well and should not be basically changed (a view endorsed by low-income advocates). Therefore, we recommend that the current framework for funding and administering low-income Public Benefits in Act 9 not be fundamentally revised.

## **VIII. Summary**

*Our recommendations are intended to improve the benefits from the Public Benefits program through more integrated state-wide energy resource efforts, improved administrative efficiency, the establishment of aggressive savings and performance targets and objectives, and increased public transparency and accountability. But, perhaps most importantly, our recommendations are a longer term view on what must be done to insure that Public Benefits is an essential and effective element in Wisconsin's overall energy resource framework that will provide resource, environmental, economic development and other public benefits. For Public Benefits to fulfill its substantial promise, it must be consistently provided adequate (which also means secure) funding if Wisconsin is to realize the intended benefits from investing in energy efficiency efforts which could help reduce the adverse economic, environmental and social impacts from meeting our expanding energy supply needs through building new infrastructure. We unanimously and strongly believe that consistently devoting*

**adequate funding to energy efficiency promotes the public interest of Wisconsin's citizens and businesses.**